



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 03 2008

REPLY TO THE ATTENTION OF:  
WN-16J

George Elmaraghy, P.E., Chief  
Division of Surface Water  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, Ohio 43216-1049

Dear Mr. Elmaraghy:

This letter provides the U.S. Environmental Protection Agency's final determination on your August 12, 2008, request to extend the date by which Ohio can certify EPA's vessel general permit (VGP) under the Clean Water Act (CWA) § 401. Under the CWA and § 401 certification regulations, a period of up to one year may be granted for a State to respond to a request for certification if unusual circumstances exist.

In considering a request, EPA must consider whether unusual circumstances exist as well as the length of an extension that is appropriate to the unusual circumstances demonstrated. EPA believes that requirements under State law do represent unusual circumstances when they mandate specific actions that must be conducted before certification can be provided. Requests for public hearings and extreme numbers of or the complex nature of comments may also qualify as unusual circumstances, but those circumstances must be required or exist before EPA can consider granting extensions to the certification period.

In assessing the length of the extension requested, EPA looks first at the specific time required to comply with mandated actions. Then EPA considers the reasonable time to prepare for those actions and to modify the certifications based upon the outcomes of those actions. EPA originally provided a 45-day period for certification that ended on August 22, 2008. EPA reasonably concludes that during that period, Ohio was preparing its certification to attempt to meet that deadline. EPA has taken this time into account in its current deliberations on the reasonable length of the extension request.

EPA agrees that unusual circumstances do exist for Ohio to provide § 401 certification for the VGP. EPA grants an extension to December 1, 2008, based upon the information and rationale provided by Ohio in its August 12, 2008, letter. If by December 1, 2008, Ohio has not acted upon the certification request, Ohio will have waived its right to certify according to CWA § 401(a)(1) and EPA will issue the permit for discharges to Ohio waters (40 C.F.R. § 124.53).

I encourage Ohio to certify the VGP at the earliest date possible. If during the process of preparing the certification, Ohio feels that a specific circumstance warrants further extension of

the certification period, please contact me or my staff to discuss that event. EPA will consider a request for a further extension provided that the request is received before December 1, 2008, and that the request describes the additional unusual circumstances that have arisen since the State's original request.

Thank you for your cooperation on this matter. If you have any questions, please contact me or your staff may contact Sean Ramach at (312) 886-5284.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy C. Henry", with a long horizontal stroke extending to the right.

Timothy C. Henry  
Acting Director, Water Division